



City of Albuquerque

Legislative File Number R-06-98 (version 1)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

Declaring The Intent Of The City Of Albuquerque, New Mexico, Subject To The Satisfaction Of Certain Conditions, To Issue Industrial Revenue Bonds In An Aggregate Principal Amount Not To Exceed \$8,000,000 In Connection With A Proposed Project To Equip A Facility For The Filling Of Prescription Pharmaceuticals.

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WHEREAS, the City of Albuquerque (the "City"), State of New Mexico (the "State"), is a legally and regularly created, established, organized and existing municipal corporation of the State; and

WHEREAS, pursuant to the Industrial Revenue Bond Act, Chapter 3, Article 32, New Mexico Statutes Annotated, 1978 Compilation, as amended (the "Act"), the City Council (the "Council") of the City is authorized to acquire industrial revenue projects to be located within, or within a 15-mile radius of, the municipality for the purpose of promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the State of New Mexico and promoting a sound and proper balance in the State of New Mexico between agriculture, commerce and industry; and

WHEREAS, Prime Therapeutics, LLC, a Delaware limited liability company qualified to do business in New Mexico (together with its successors and assigns, the "Company"), has presented to the City a proposal (the "Preliminary Project Plan") whereby the City will in accordance with the Act equip a building to be located in City Council District 5 (the "Project Site") for the purpose of establishing a facility for the filling of prescription pharmaceuticals, which equipment will constitute a project (the "Project") as defined in the Act; and

WHEREAS, the Company proposes the issuance by the City of its Industrial Revenue Bonds (Prime Therapeutics, LLC Project) Series 2006 (the "Bonds") under the Act in an aggregate principal amount not to exceed \$8,000,000 to finance all or part of the costs of the Project and certain costs in connection with the authorization, issuance and sale of the Bonds; and

WHEREAS, the issuance of the Bonds by the City to finance all or a part of the Project will constitute one of the inducements whereby the Company will determine to expand its operations in the City; and

WHEREAS, the City desires to indicate its intent, subject to the conditions provided

in Section 7 below, to proceed with the issuance of the Bonds for the financing of the Project pursuant to the terms of an ordinance (the "Bond Ordinance"); and

WHEREAS, the City and the Company understand that the adoption of this Resolution shall not obligate the City to issue the Bonds except in full compliance with the terms of the Bond Ordinance adopted by the City prior to the issuance of the Bonds and related bond documents in form satisfactory to the City.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. Ratification. All actions (not inconsistent with the provisions hereof) heretofore taken by the Council and the officers and officials of the City, related to the purpose of this Resolution are ratified, approved and confirmed.

Section 2. Project. The Council has been informed that:

a. The Project will consist of the acquisition of equipment for a facility for the filling of prescription pharmaceuticals. The building will not be part of the Project.

b. The maximum aggregate face amount of the obligations to be issued with respect to the Project is \$8,000,000.

c. The initial developer and operator of the Project will be Prime Therapeutics, LLC.

d. Project will be located in City Council District 5, in Albuquerque, New Mexico.

Section 3. Interest on Bonds not Tax-exempt. The City understands that the Company does not intend that the Bonds be "qualified private activity bonds" as that term is defined in the Internal Revenue Code of 1986, as amended.

Section 4. Intent to Issue Bonds. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the City, it is the Council's intent to take all necessary and advisable steps to effect the issuance of the Bonds, in a principal amount not to exceed \$8,000,000 in order to defray part or all of the costs of the Project, provided that this expression of intent is conditioned upon the issuance of the Bonds on or before one year from the date of the adoption of this Resolution, and further provided that issuance of the Bonds is subject to the conditions described in Section 7 hereof.

Section 5. No Pecuniary Liability of the City. The Bonds shall be payable solely from the revenues of the Project, by the Company, from proceeds of the Bonds and from investment earnings of Bond proceeds, if any. The Bonds shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico or the Charter of the City. In addition, if the Bonds are issued, the Company shall indemnify and hold the City harmless from and against any liability that may be asserted against the City with respect to the City's ownership of or leasehold interest in the Project or the issuance of the Bonds. Nothing in this Resolution or in any other instrument shall be considered as obligating the City to any pecuniary liability or as constituting a charge upon the general credit of the City or against its general revenues or its taxing power, it being understood that no costs are to be borne by the City and that all costs incurred by the City in connection with the issuance and sale of the Bonds will be promptly reimbursed by the Company.

Section 6. State Tax Matters. The City intends to acquire in its name the Project, including all capital equipment and other tangible personal property used in the Project, and for such acquisitions the City will, consistent with New Mexico state law, deliver the

necessary nontaxable transaction certificates to the Company for delivery to vendors as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. For this purpose, upon adoption of this Resolution, the City recognizes that an agency relationship shall be deemed to exist between the City and the Company of the type described in 3 NMAC 2.54.22 (pertaining to tax treatment of purchases of tangible personal property in industrial revenue bond projects), and officials of the City are hereby authorized to issue nontaxable transaction certificates to the Company for Project purchases immediately upon the adoption of this Resolution. Such certificates shall not be used other than with respect to such capital equipment and tangible personal property, nor shall the Company use such Certificates after completion of the Project. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, 3 NMAC 2.54.22, but shall not be construed to be an "inducement resolution" as that term is used in City Resolution R-196 (governing review of industrial revenue bond projects).

Section 7. Issuance of Bonds Conditioned upon Full Review and Approval. The issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to, and specifically conditioned upon, a review of the Project and a Final Project Plan (the "Final Project Plan") by the City in the normal course, including, without limitation, the preparation of an economic analysis and a review of the Project and the Final Project Plan by the Albuquerque Development Commission (the "ADC") pursuant to City Resolution R-196 and the rules of the ADC. Issuance of the Bonds will be subject to the approval and authorization by the Council pursuant to the Bond Ordinance following reasonable public notice of the time, date and place of the Council's public hearing, of its intent to adopt the Bond Ordinance. In connection with this Resolution, the Council has been informed that the Company has expressed its understanding that a failure or refusal of the Council, however arising, to adopt the Bond Ordinance will have the effect of voiding any benefits to the Company under the Act, including voiding the nontaxable transaction certificates issued to the Company for Project purchases and making such purchases subject to whatever tax would be due if such certificates had not been issued.

Section 8. Authorized Actions. The Mayor and other appropriate City officials are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution.

Section 9. Severance Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 10. Headings. Titles of sections in this Resolution are included for convenience only, and shall not be construed as modifying the text.

Section 11. Repealer. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; however, this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

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